

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-3689

United States of America,

Appellee,

v.

Elliot Lynn Yellow Hair,

Appellant.

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Appeal from the United States
District Court for the District
of South Dakota.

[UNPUBLISHED]

Submitted: June 14, 2002

Filed: June 20, 2002

Before MORRIS SHEPPARD ARNOLD, FAGG, and MURPHY, Circuit Judges.

PER CURIAM.

Elliot Yellow Hair was convicted of assault resulting in serious bodily injury in violation of 18 U.S.C. §§ 113(a)(6), 1153 (2000). The district court* found Yellow Hair perjured himself at trial and applied a two-level sentencing enhancement for obstruction of justice. See United States Sentencing Guidelines § 3C1.1 (2000). Yellow Hair appeals his sentence, contending the district court committed clear error

*The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota.

when it made the factual findings which support the sentencing enhancement. See United States v. O'Dell, 204 F.3d 829, 836 (8th Cir. 2000) (standard of review).

At Yellow Hair's trial, several witnesses gave descriptions of Yellow Hair's assault on the victim. While testifying, Yellow Hair conceded he kicked and stomped on the victim. When the government's attorney asked Yellow Hair if he caused the physical damage to the victim shown in a photograph taken soon after the assault, however, Yellow Hair replied "No." (Tr. 418.) The district court highlighted this part of Yellow Hair's testimony when making its factual findings in support of the obstruction of justice enhancement. (Sent. Tr. 15-16.) The district court stated: "I find that [response] is an outright fabrication on the part of the defendant." Id. The district court noted the jury came to the same conclusion when it convicted Yellow Hair and that a reasonable trier of fact could not have reached a different conclusion.

Based on our review of the parties' briefs and the relevant parts of the record, we conclude the district court did not commit clear error in finding Yellow Hair perjured himself at trial. Further, we conclude the district court properly assessed the two-level sentencing enhancement for obstruction of justice in this situation. Thus, we affirm the sentence imposed by the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.